

Doc. 81

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HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OMNI INNOVATIONS, LLC, a Washington Limited Liability company; EMILY ABBEY, an individual,

AT SEATTLE

Plaintiffs,

V.

ASCENTIVE, LLC, a Delaware limited liability company; ADAM SCHRAN, individually and as part of his marital community; JOHN DOES, I-X,

Defendants.

**NO. C06-1284-JCC
COUSEL'S REPLY RE: MOTION
FOR LEAVE TO WITHDRAW AS
COUNSEL AND TO FILE
DECLARATIONS UNDER SEAL**

NOTE FOR HEARING:
August 31, 2007

**COUNSEL'S REPLY RE: MOTION FOR LEAVE
TO WITHDRAW AS COUNSEL AND TO FILE
DECLARATIONS UNDER SEAL - 1**

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OMNI v. ASCENTIVE

In Mr. Gordon's "Memorandum and Declaration" in opposition to counsel's motion to withdraw, Mr. Gordon sets forth numerous factual allegations against Mr. Siegel and Mr. McKinley (hereafter "counsel"). Mr. Gordon apparently believes these allegations will somehow serve as a basis for the Court to require counsel to continue to represent Mr. Gordon and/or Omni Innovations, LLC (hereafter "Gordon"). However, quite the contrary, Gordon's allegations actually bolster counsel's argument that this Court should grant counsel's motion to withdraw.

The Court need not determine whether Gordon's allegations are true or false to decide the much more narrow question of whether counsel should be compelled to continue to represent Gordon in this case. Accordingly, counsel is not going to provide a detailed response to Gordon's allegations except as follows:

Counsel denies that any of Gordon's cases were brought for any reason other than Gordon's professed desire, and authorization to bring those cases. Gordon's allegations to the contrary are, at a minimum, suspect on their face, as without Gordon first identifying and producing the offending spam, as well as the party responsible for sending it, initiating these cases would have been virtually impossible. Further, Gordon's allegation in this regard is patently belied by that

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OMNI v. ASCENTIVE

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1 part of Gordon's complaining that counsel didn't bring MORE of his cases. Prior
2 to counsel ever becoming involved with Gordon, Gordon had begun initiating
3 "spam lawsuits" on his own, pro se, and as recently as this month, Gordon has
4 initiated further pro se proceedings in the Washington State Superior Courts
5 against parties named in his federal lawsuits. By his words and actions, Gordon
6 has demonstrated beyond the shadow of any doubt that Gordon himself was the
7 driving force behind all of his various lawsuits. Gordon's attempt to blame
8 counsel for Gordon's "litigation factory" is entirely without merit.

9

10 Counsel further denies the allegation, or any implication that Gordon has
11 "paid" counsel for representing Gordon in his pending cases. It is simply untrue.
12 Counsel denies that Gordon has not been provided a complete accounting of all
13 costs and fees related to counsel's representation of Gordon. Counsel denies that
14 any of Gordon's funds held in counsel's IOLTA trust fund have been used
15 improperly. Finally, counsel emphatically and unequivocally denies each and
16 every one of Gordon's remaining allegations.

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18 That being said, counsel draws the Court's attention to the inescapable
19 conclusion that the very fact that Gordon has made these allegations compels the
20 court to grant counsel's motion to withdraw as counsel.

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22 As set forth in his "Memorandum and Declaration," Gordon has filed a Bar
23 Grievance and a criminal complaint against counsel. As set forth in counsel's

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25 **COUNSEL'S REPLY RE: MOTION FOR LEAVE
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OMNI v. ASCENTIVE

1 motion to withdraw, Gordon has further threatened to bring a malpractice lawsuit
2 against counsel. Given Gordon's serious charges and complaints against counsel,
3 it is simply amazing that Gordon would even want counsel to continue to represent
4 him. Counsel is at a loss to understand why Gordon would want counsel to
5 continue to represent him if he truly believed counsel has violated the ethical rules,
6 committed criminal acts against him, and committed malpractice. Regardless of
7 the inherent contradictions of Gordon's accusations against counsel and his
8 professed desire to continue to be represented by counsel, by taking these actions
9 and making these allegations, Gordon has effectively destroyed the attorney client
10 relationship to the point where it is impossible for counsel to continue to
11 simultaneously represent Gordon and comply with the Rules of Professional
12 Conduct (RPCs).

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14 In *WHITING v. LACARA*, 187 F.3d 317; (1999) U.S. App. LEXIS 19952, the
15 United States Court Of Appeals For The Second Circuit considered a similar
16 factual circumstance, where, as is the case here, an attorney's advice had been
17 ignored, the attorney had been threatened with a malpractice suit, and the attorney
18 then sought to withdraw. The appeals court ruled that forcing the attorney to
19 continue in this circumstance was an abuse of discretion, commenting:

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21 We have determined that "an attorney who continues to represent a client
22 despite the inherent conflict of interest in his so doing [due to possible Rule
23 11 sanctions] risks an ethical violation." *Healey v. Chelsea Resources, Ltd.*,
947 F.2d 611, 623 (2d Cir. 1991) (citing *Calloway v. Marvel Entertainment*

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25 **COUNSEL'S REPLY RE: MOTION FOR LEAVE
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OMNI v. ASCENTIVE

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1 *Group*, 854 F.2d 1452, 1471 (2d Cir. 1988), rev'd on other grounds, 493
2 U.S. 120, 107 L. Ed. 2d 438, 110 S. Ct. 456 (1989)). In this case, appellee's
3 belief that he can dictate to Lacara how to handle his case and sue him if
4 Lacara declines to follow those dictates leaves Lacara in a position
5 amounting to a functional conflict of interest. If required to continue to
6 represent Whiting, Lacara will have to choose between exposure to a
7 malpractice action or to potential Rule 11 or other sanctions. To be sure,
8 such a malpractice action would have no merit. However, we have no doubt
9 it would be actively pursued, and even frivolous malpractice claims can have
10 substantial collateral consequences. *WHITING v. LACARA*, 187 F.3d 317,
11 323.

12
13 Counsel has either stayed, or has pending motions seeking a stay, of all of
14 Gordon's pending lawsuits. As such, Gordon will have plenty of time to insure
15 that no prejudice results from counsel's withdrawal. In light of Gordon's very
16 serious accusations against counsel, this Court should immediately grant Mr.
17 Siegel and Mr. McKinley's motions to withdraw.

18
19 DATED this 30th day of August, 2007.

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21 **i.Justice Law, P.C.**

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25 Douglas E. McKinley, WSBA #20809
Atorneys for Plaintiffs

COUNSEL'S REPLY RE: MOTION FOR LEAVE
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OMNI v. ASCENTIVE

1
2 Robert J. Siegel, WSBA #17312
3 Attorneys for Plaintiffs
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Certificate of Service

6
7 I, hereby, certify that on August 30, 2007, I filed the subjoined pleading with this
8 Court via approved CMECF electronic filing, that electronically serves Attorneys
9 for Defendants:
10

11 I also certify that that on August 30, 2007, I served the subjoined pleading upon
12 plaintiff James S. Gordon, Jr. electronically by email, and by regular US mail,
13 postage prepaid.
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25 /s/ Robert J. Siegel
Robert J. Siegel

**COUNSEL'S REPLY RE: MOTION FOR LEAVE
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OMNI v. ASCENTIVE

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